IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1703 of 2006
To
FIRST APPEAL No. 1712 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL CORP. - Appellant
Versus
HASHMUKHLAL MANGALDAS - Defendant

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Appearance :

MR BH BHAGAT WITH MR HM BHAGAT for Appellant.
MR CH VORA for Respondents.
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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 04/05/2007
COMMON ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. This group of 10 Appeals is filed against the judgments and orders of the learned Small Causes Court Judge, Ahmedabad passed in Municipal Valuation Appeal Nos.192 to 201 of 2004 setting aside the assessment made by the appellant – Corporation and directing to assess the appeal premises on the basis of carpet area adopted in the year 2000 – 01 to 2004 – 05 and further directing to refund the excess amount, if any, deposited by the original appellants – present respondents. Details regarding First Appeals, appeals decided by the Small Causes Court, area considered by appellant Corporation as well as Small Causes Court for determining Gross Ratable Value etc. are as under :-

Sr. No	*First Appeal No.*	*M.V.A No.*	*Name of the occupant*	*Area considered by AMC for determining GRV*	*Area considered by Small Causes Court for determining GRV*
01.	1703 of 2006.	195 of 2004.	Hasmukhlal Mangaldas	33.06 Sq. Mt.	17 Sq. Mts.
02.	1704 of 2006	201 of 2004.	Jayshreeben Yashwantbhai	33.66 Sq. Mt.	17 Sq. Mts.
03.	1705 of 2006	200 of 2004.	Hitesh H. Makhija.	35.36 Sq. Mt.	17 Sq. Mts.
04.	1706 of 2006	199 of 2004.	Kiran Shantilal Parekh	41.14 Sq. Mt.	17 Sq. Mts.
05.	1707 of 2006	198 of 2004.	Dipakbhai Ratilal	45.50 Sq. Mt.	17 Sq. Mts.
06.	1708 of 2006	197 of 2004.	Rajuben K. Shah	34.80 Sq. Mt.	17 Sq. Mts.
07.	1709 of 2006	196 of 2004.	Jayantilal Oghaddas	34.68 Sq. Mt.	17 Sq. Mts.
08.	1710 of 2006	194 of 2004.	Hasmukhlal Mangaldas Rana	37.10 Sq. Mt.	17 Sq. Mts.
09.	1711 of 2006	193 of 2004.	Hasmukhlal Mangaldas Rana	37.10 Sq. Mt.	17 Sq. Mts.
10.	1712 of 2006	192 of 2004.	Pinakin Ratilal Mehta.	33.60 Sq. Mt.	17 Sq. Mts.

2. All these appeals were admitted by this Court on 20.12.2006 and Civil Applications preferred by the

appellant – Corporation praying stay against the implementation, execution and operation of the impugned judgments and orders passed by the learned Small Causes Court Judge, Ahmedabad were disposed of by this Court on 13.04.2007 in view of the fact that this Court has issued the direction to the Registry to fix up the appeals for final hearing. It is in this view of the matter, appeals are taken up for final hearing.

3. The present respondent in each of these appeals has filed Municipal Valuation Appeal before the Small Causes Court, Ahmedabad challenging the assessment of taxes being very excessive made by the appellant – Corporation and praying for reduction in the assessment of taxes, having regard to the facts and circumstances of the case. The present appellant has contested the said appeals by contending that the present respondent has not deposited 75% of tax amount and that the present respondent has used minimum space of the premises and erected further construction in the premises.

The assessment of tax made by the appellant Corporation is, therefore, reasonable and the appeal filed by the present respondent before the Small Causes Court deserves to be dismissed. The learned Small Causes Court Judge has considered the affidavit filed by the present respondent and adopted the measurement of the premises shown by the present respondent. Despite the fact that the present appellant has raised the contention before the learned Small Causes Court Judge that the measurement of loft is required to be included in the measurement of the premises because in view of the Circular issued by the appellant – Corporation, if the Loft is of a particular height and width, it is required to be included in the measurement of the premises. The learned Small Causes Court Judge has ignored this contention and taken the view that as long as the premises remains in self-occupation, the ratable value of the succeeding year will be that which was determined in accordance with law for the preceding year.

4. It is this order which is under challenge in the present group of appeals.

5. Mr. B. H. Bhagat, learned advocate appearing for Mr. H.M. Bhagat for the appellant Corporation has submitted that the property in question is situated in a posh area of the city of Ahmedabad and hence the valuation fixed by the appellant Corporation is just and proper. He has further submitted that the learned Small Causes Court Judge has not taken into consideration the additional construction of loft and thereby increase in the carpet area and corresponding increase in GRV of the property. The Officers of the Corporation had taken measurement of the appeal premises in presence of the respondents occupants and they have also put their signatures on the measurement sheet. He has shown these documents to the Court. The learned Small Causes Court Judge has not taken into consideration the new carpet area formula according to which wooden loft/open shade of particular height would be included in the total carpet area, provided

that the wooden loft is used for commercial purpose and is in commercial property. He has submitted that in the present case, the property is by nature commercial and loft is like a room below the ceiling of six feet height and used for commercial purpose. He has shown the Circular No. 6/2001-02 issued by the Ahmedabad Municipal Corporation wherein this formula is shown. The learned Small Causes Court Judge has acted in a mechanical manner by keeping in view the measurement of the property indicated in the affidavit and thus fixing gross ratable value. The appellant Corporation has fixed the GRV in accordance with the new carpet area formula after considering all the factors i.e. area, locality, user, amenities and year of construction and at the same time, the present respondents have not produced any evidence regarding measurement of property, apart from affidavits. He has, therefore, submitted that the valuation adopted by the learned Small Causes Court Judge is ex-facie lower, unreasonable and not justified on any basis whatsoever. He has, therefore, submitted that the learned Small Causes

Court Judge ought to have maintained the GRV of the premises in question as fixed by the appellant Corporation and he ought not to have reduced the same.

6. Mr. C. H. Vora, learned advocate appearing for the respondent in all these appeals has submitted that the Corporation has not produced any documentary evidence before the lower Court and it is for the first time before this Court the Circular as well as measurement sheets are produced. The present respondents have no opportunity to meet with the said documents and the learned Small Causes Court Judge has rightly decided the appeals on the basis of the affidavits as well as the earlier years record and hence, no interference is called for in the orders and judgments passed by the learned Small Causes Court Judge.

7. After having heard learned advocates appearing for the respective parties and after having considered the impugned order and judgment of the learned

Small Causes Court Judge as well as the appeal memo, we are of the view that the learned Small Causes Court Judge has determined the GRV on the basis of the affidavits and past year's assessment without considering the additional construction of loft as well as the new carpet area formula adopted by the Ahmedabad Municipal Corporation. The Officers of the appellant Corporation have made the measurement of the appeal premises in the presence of the respondents and the measurement of loft was included for the purpose of determination of gross ratable value as per the new formula. However, this aspect has not been properly appreciated by the learned Small Causes Court Judge. It appears from the record that the attention of the learned Small Causes Court Judge was not drawn to this measurement sheets or to the Circular No. 6/01-02. This has been shown to the Court for the first time without making any application for production of additional evidence under Order XLI, Rule 27 of the Civil Procedure Code. Rule 27 of Order XLI of the Code of Civil Procedure says that additional evidence

cannot be taken on record except in a case where trial Court, which was duty bound to take evidence on the record has illegally refused to receive the evidence or a particular piece of evidence was not within the knowledge of the person trying to produce it or though it was within the knowledge of the person, but despite his best efforts, he could not procure the same and produce before the trial Court and lastly that the document is required to be taken as additional evidence for just and proper disposal of the dispute pending consideration before the appellate Court. We are of the view that for the purpose of determining the correct gross ratable value or for making correct assessment of appeal premises, the Circular No. 6/2001-02 as well as the measurement sheets prepared by the appellant Corporation in presence of the respondents are required to be considered. We, therefore, quash and set aside the impugned orders and judgments and remand all the matters back to the learned Small Causes Court Judge at Ahmedabad for deciding the same afresh in accordance with law, after

considering the measurement sheets as well as Circular No. 6/01-02 and after giving an opportunity of hearing and/or to lead any evidence in this regard, to the parties.

8. In the above view of the matter, all these appeals are allowed for statistical purpose without any order as to costs.

9. Registry is directed to keep copy of this order in each of these appeals. Registry is further directed to send the Records and Proceedings to the Small Causes Court, Ahmedabad forthwith.

[A. M. KAPADIA, J.]

[K. A. PUJ, J.]

Savariya